



Order 2008-4-8

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 4th day of April, 2008

Served: April 4, 2008

Application of

BELLVIEW AIRLINES LTD.

for a foreign air carrier permit under 49 U.S.C. §41301

Docket DOT-OST-2007-27184

ORDER TO SHOW CAUSE

Summary

By this order we tentatively find that it is in the public interest to grant the application of Bellview Airlines Ltd. (Bellview) for a foreign air carrier permit (attached as the Appendix to this order).

Background

On August 23, 2005, the Department issued a Notice, in Docket OST-2005-22228, announcing several steps designed to streamline our regulatory procedures for licensing U.S. and foreign air carriers. Among other things, the Notice stated that:

Assuming, based on the record and on the public interest/public convenience and necessity elements germane to our licensing decisions, that we were in a position to act favorably, we would proceed to issue a[n]...order...tentatively deciding (*i.e.*, show-cause) to award a...certificate (or permit)...for the standard duration we would normally have imposed (such as, in the case of certificates, five years for limited-entry markets, indefinite for open-entry markets, and in the case of permits, five years for comity and reciprocity regimes, indefinite for agreement regimes).

Our action in this Order serves to implement these streamlined regulatory procedures for the application involved in this proceeding.

Application

By application filed February 12, 2007, Bellview, a foreign air carrier of Nigeria, requests a foreign air carrier permit under 49 U.S.C. §41301, to engage in (1) scheduled foreign air transportation of persons, property and mail from a point or points in Nigeria, via intermediate points, to a point or points in the United States, and beyond; and (2) charter foreign air transportation in accordance with the U.S.-Nigeria Air Transport Agreement and the Department's regulations governing charters. The carrier proposes initially to conduct these operations using wet leased aircraft.

The applicant provided evidentiary materials required by 14 CFR Part 211 of our regulations to support its request for a foreign air carrier permit.

Decision

We have decided, under assigned authority and consistent with our August 23, 2005 Notice referenced above, tentatively to grant, subject to show-cause procedures, the applicant's request for a foreign air carrier permit, subject to conditions. We tentatively find that grant of this authority is in the public interest, that the applicant has demonstrated, based on the record, that it is financially and operationally fit to perform the services authorized,¹ and that it is substantially owned and effectively controlled by citizens of Nigeria.²

The authority sought by the applicant is encompassed by the aviation agreement between the United States and Nigeria. We also note that the applicant is properly licensed by its homeland to perform the proposed services. We have verified the applicant's compliance with 14 CFR Parts 203 (Warsaw liability waiver), and 205 (insurance requirements).

In view of the foregoing and all facts of record,³ we tentatively find and conclude that:

1. It is in the public interest to issue the applicant a foreign air carrier permit in the form attached;
2. The applicant is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of Title 49 of the U.S. Code, and to our rules, regulations, and requirements;

¹ Bellview stated that it was involved in a fatal accident in 2005, and that the investigation into that accident is ongoing.

² Bellview is owned entirely by citizens of Nigeria, with three individuals, Kayode Odukoya, Tunde Yusuf, and Abisoye Mohammed each owning more than five percent of the shares of the company. All of Bellview's Directors and key operating personnel are citizens of Nigeria.

³ The applicant's request for a foreign air carrier permit was summarized in the Department's published weekly list of applications filed. This notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of this foreign air carrier permit authority. On February 22, 2007, Virgin Nigeria Airways Limited filed an answer to Bellview's application, stating that it did not oppose the application, and urging that the Department promptly grant both the Bellview application, as well as Virgin Nigeria's requests in Dockets DOT-OST-2005-23460 and DOT-OST-2005-23461 for authority to serve the United States. We are acting on the Bellview and Virgin Nigeria applications contemporaneously.

3. The applicant is substantially owned and effectively controlled by citizens of Nigeria;
4. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
5. The issuance of this foreign air carrier permit will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined in 14 CFR §313.4(a)(1) of our regulations;⁴
6. The public interest does not require an oral evidentiary hearing on the application; and
7. Our action with respect to this foreign air carrier permit should, unless disapproved by the President of the United States under §41307 of Title 49 of the U.S. Code, become effective on the 61st day after its submission for §41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove this portion of the Department's decision under that section, whichever occurs earlier.

In view of the above, and acting under authority assigned by the Department in its regulations, 14 CFR Part 385, we find that our tentative action is consistent with Department policy.

ACCORDINGLY,

1. We direct all interested persons to show cause why our tentative decision on the application of Bellview Airlines Ltd., set forth above, should not be made final;
2. Any interested person objecting to the issuance of an order making final our tentative findings and conclusions with respect to the applicant's request for a foreign air carrier permit shall, no later than twenty-one (21) calendar days after the date of service of this order, file with the Department and serve on the parties to this proceeding, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence to be relied upon in support of the objections; if objections are filed, answers to objections are due no later than seven (7) calendar days thereafter;
3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action;
4. In the event no objections are filed, all further procedural steps shall be deemed waived, and the Department will enter an order which will (subject to Presidential review under §41307 of

⁴ This finding is based on the fact that the grant of this permit will not result in a near-term net annual change in aircraft fuel consumption of 10 million gallons or more.

Title 49 of the U.S. Code) make final our tentative findings and conclusions set forth in this order; and

5. We will serve a copy of this order on Bellview Airlines Ltd.; Virgin Nigeria Airways Limited; the Embassy of Nigeria in Washington, D.C.; the Department of State; and the Federal Aviation Administration.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

Appendix

*An electronic version of this document is available on the World Wide Web at:
<http://www.regulations.gov>*

Issued by
Order 2008-



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER

Bellview Airlines Ltd.

A Foreign Air Carrier of Nigeria

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code, and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation of persons, property and mail, as follows:

From a point or points in Nigeria, via intermediate points, to a point or points in the United States, and beyond

The holder is also authorized to engage in charter foreign air transportation of persons, property and mail in accordance with the U.S.-Nigeria Air Transport Agreement and the Department's regulations governing charters.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.

In addition, the holder, in exercising the privileges granted in this permit, may only use aircraft wet leased from a duly authorized and properly supervised U.S. or foreign air carrier, unless the Department has removed this condition by subsequent Order.

This permit shall be effective on . Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated by the Government of Nigeria (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the

Government of Nigeria in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and Nigeria. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and Nigeria become parties.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

Foreign Air Carrier Permit Conditions

In the conduct of the operations authorized, the foreign carrier applicant shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.